



State of Utah

Department of Natural Resources

ROBERT L. MORGAN
Executive Director

Division of Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

October 28, 2004

Alex C. Boulton, President
Brush Resources, Incorporated
P.O. Box 815
Delta, Utah 84624

Subject: Approval of Replacement Surety, Brush Resources, Inc., Topaz Mining
Properties, M/023/003, Juab County, Utah

Dear Mr. Boulton:

On July 19, 2004, we received notification from National City Bank, that they were not going to extend the Letter of Credit for your Topaz Mining Properties, effective October 22, 2004. On October 22, 2004, we received a replacement Letter of Credit (LOC), now issued by Bank One. Thank you for providing the replacement surety so your mining operation was not without adequate surety.

On October 25, 2004, we received the replacement Reclamation Contract, which is directly tied to the reclamation surety. On October 26, 2004, the Division Director accepted the form and amount of replacement surety by signing and executing the documents. Copies of the Bank One LOC and Reclamation Surety are enclosed for your records.

We have also enclosed and are returning the original Nov. 6, 2002 Reclamation Contract and the expired National City Bank LOC #SCL008327 for your disposal.

Thank you for keeping your mine in good standing. If you have any questions regarding this letter, please contact either me or Tom Munson of the Minerals Staff.

Sincerely,

Daron R. Haddock
Permit Supervisor
Minerals Regulatory Program

DRH:jb

O:\M023-Juab\M0230003-Topaz-brush\final\surety-replace-10282004.doc

FORM MR-RC
Revised January 30, 2003
RECLAMATION CONTRACT

File Number M/023/003
Effective Date Oct 26, 2004
Other Agency File Number SITLA ML 18237

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION of OIL, GAS and MINING
1594 West North Temple Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
(801) 538-5291
Fax: (801) 359-3940

RECLAMATION CONTRACT
---ooOoo---

RECEIVED
OCT 25 2004

DIV. OF OIL, GAS & MINING

For the purpose of this RECLAMATION CONTRACT the terms below are defined as follows:

"NOTICE OF INTENTION" (NOI): (File No.)	<u>M/023/003</u>
(Mineral Mined)	<u>Bertrandite Ore</u>
"MINE LOCATION":	
(Name of Mine)	<u>Topaz Mining Properties</u>
(Description)	<u>47 Miles West Brush Wellman Road</u>
	<u>Delta, UT 84624</u>
"DISTURBED AREA":	
(Disturbed Acres)	<u>203</u>
(Legal Description)	<u>(refer to Attachment "A")</u>
"OPERATOR":	
(Company or Name)	<u>Brush Resources Inc.</u>
(Address)	<u>P.O. Box 815</u>
	<u>Delta, UT 84624</u>
(Phone)	<u>(435) 864-2701</u>

"OPERATOR'S REGISTERED AGENT":

Name)
(Address)

A. John Davis
Pruitt, Gushee
Suite 1800 Beneficial Life Tower
Salt Lake City, UT 84111-1495
(801) 531-8446

(Phone)

"OPERATOR'S OFFICER(S)":

President, Alex C. Boulton
Treasurer, Michael C. Hasychak

SURETY":

(Form of Surety - Attachment B)

Irrevocable Letter of Credit

"SURETY COMPANY":

(Name, Policy or Acct. No.)

Bank One

"SURETY AMOUNT":

(Escalated Dollars)

\$367,600.00

"ESCALATION YEAR":

2008

"STATE":

State of Utah

"DIVISION":

Division of Oil, Gas and Mining

"BOARD":

Board of Oil, Gas and Mining

ATTACHMENTS:

A "DISTURBED AREA":

B "SURETY":

This Reclamation Contract (hereinafter referred to as "Contract") is entered into between Brush Resources, Inc. the "Operator" and the Utah State Division of Oil, Gas and Mining ("Division").

WHEREAS, Operator desires to conduct mining operations under Notice of Intention (NOI) File No. M/023/003 which has been approved by the Utah State Division of Oil, Gas and Mining under the Utah Mined Land Reclamation Act, Sections 40-8-1 et seq., Utah Code Annotated, (1953, as amended) (hereinafter referred to as "Act") and implementing rules; and

WHEREAS, Operator is obligated to reclaim that area described as the Disturbed Area as set forth and in accordance with Operator's approved Reclamation Plan, and Operator is obligated to provide surety in form and amount approved by the Division, to assure reclamation of the Disturbed Area.

NOW, THEREFORE, the Division and the Operator agree as follows:

1. Operator agrees to conduct reclamation of the Disturbed Area in accordance with the Act and implementing regulations, the original Notice of Intention dated March 16, 1977, and the original Reclamation Plan dated March 16, 1977. The Notice of Intention as amended, and the Reclamation Plan, as amended, are incorporated by this reference and made a part hereof.
2. Concurrent with the execution hereof, Operator has provided surety to assure that reclamation is conducted, in form and amount acceptable to the Division. Such surety as evidenced by the Surety Contract is in the form of the surety attached hereto as Attachment B and made a part hereof. The Surety Contract shall remain in full force and effect according to its terms unless modified by the Division in writing. If the Surety Contract expressly provides for cancellation, then, within 60 days following the Division's receipt of notice that the Surety Company intends to cancel the Surety Contract, the Operator shall provide a replacement Surety Contract in a form and amount reasonably acceptable to the Division. If the Operator fails to provide an acceptable replacement Surety Contract, the Division may order the Operator to cease further mining activities and to begin immediate reclamation of the Disturbed Area.
3. Operator agrees to pay legally determined public liability and property damage claims resulting from mining to the extent provided in Section 40-8-7(1)(e) of the Act.
4. Operator agrees to perform all duties and fulfill all reclamation requirements applicable to the mine as required by the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
5. The Operator's liability under this Contract shall continue in full force and effect until the Division certifies that the Operator has reclaimed the Disturbed Area in accordance with the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
6. If reclamation of discrete sections of the Disturbed Area is completed to the satisfaction of the Division, and the Division finds that such sections are severable from the remainder of the Disturbed Area, Operator may request the Division to certify that Operator has reclaimed such discrete sections of the Disturbed Area in accordance with the Act and Implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended. If the Division makes such certification, Operator may make request to the Division that the aggregate face amount of the Surety Contract provided pursuant to paragraph 2 be reduced to an amount necessary to provide for completion of the remaining reclamation. The Division shall hear Operator's request for such reduction in accordance with the Board's Procedural Rules concerning requests for Agency Action.

7. Operator agrees to indemnify and hold harmless the State, Board and the Division from any claim, demand, liability, cost, charge, suit, or obligation of whatsoever nature arising from the failure of Operator or Operator's agents and employees, or contractors to comply with this Contract.
8. Operator may, at any time, submit a request to the Division to substitute surety. The Division may approve such substitution if the substitute surety meets the requirements of the Act and the implementing rules.
9. This Contract shall be governed and construed in accordance with the laws of the State of Utah.
10. If Operator shall default in the performance of its obligations hereunder, Operator agrees to pay all costs and expenses, including reasonable attorney's fees and costs incurred by the Division and/or the Board in the enforcement of this Contract.
11. Any breach that the Division finds to be material of the provisions of this Contract by Operator may, at the discretion of the Division, result in an order to cease mining operations. After opportunity for notice and hearing, the Board of Oil, Gas and Mining may enter an order to revoke the Notice of Intention, order reclamation, or order forfeiture of the Surety Contract, or take such other action as is authorized by law.
12. In the event of forfeiture of the Surety Contract, Operator shall be liable for any additional costs in excess of the surety amount which are required to comply with this Contract. Any excess monies resulting from forfeiture of the Surety Contract, upon completion of reclamation and compliance with this Contract, shall be returned to the rightful claimant.
13. This Contract including the Notice of Intention, as amended and the Reclamation Plan, as amended, represents the entire agreement of the parties involved, and any modification must be approved in writing by the parties involved.
14. Each signatory below represents that he/she is authorized to execute this Contract on behalf of the named party.

OPERATOR:

Brush Resources Inc.
Operator Name

By Alex C. Boulton
Authorized Officer (Typed or Printed)

President
Authorized Officer - Position

Alex C. Boulton 10-21-04
Officer's Signature Date

STATE OF Utah)
) ss:
COUNTY OF Millard County)

On the 21st day of October, 2004, personally appeared before me,
Alex C. Boulton who being by me duly sworn did say that he/she is the
President of Brush Resources Inc.
and duly acknowledged that said instrument was signed on behalf of said company by
authority of its bylaws or a resolution of its board of directors and said
Alex C. Boulton duly acknowledged to me that said
company executed the same.

Debra J. Wagner
Notary Public
Residing at Hinsdale, Utah
09-18-2007
My Commission Expires:



DIVISION OF OIL, GAS AND MINING:

By Lowell P. Braxton
Lowell P. Braxton, Director

10/26/04
Date

STATE OF Utah)
COUNTY OF Salt Lake) ss:

On the 26th day of October, 2004, Lowell P. Braxton
personally appeared before me, who being duly sworn did say that he, the said
Lowell P. Braxton is the Director of the Division of Oil, Gas and Mining,
Department of Natural Resources, State of Utah, and he duly acknowledged to me that
he executed the foregoing document by authority of law on behalf of the State of Utah.



Joelle Burns
Notary Public
Residing at: S LC Utah

April 4, 2005
My Commission Expires:

ATTACHMENT "A"

Brush Resources Inc.
Operator

Topaz Mining Properties
Mine Name

M/023/003
Permit Number

Juab County, Utah

LEGAL DESCRIPTION

Include 1/4, 1/4, 1/4 sections, townships, ranges and any other descriptions that will legally determine where disturbed lands are located. Attach a topographic map of suitable scale (max. 1 inch = 500 feet; 1 inch = 200 feet or larger scale is preferred) showing township, range and sections and a clear outline of the disturbed area boundaries tied to this Reclamation Contract and surety.

The detailed legal description of lands to be disturbed includes portions of the following lands not to exceed 203 acres under the approved permit and surety, as reflected on the attached map labeled Topaz Mining Properties and dated December 22, 2000:

Township 13 South, Range 12 West, SLM

- Section 4
The SW 1/4 of the SE 1/4, and the SE 1/4 of the SW 1/4.
- Section 5
Lot 1, and Lot 2, and the S 1/2 of the NE 1/4, and the SE 1/4, and the E 1/2 of the SW 1/4, and the SE 1/4 of the NW 1/4.
- Section 7
The S 1/2 of the NE 1/4, and the SE 1/4, and the E 1/2 of the SW 1/4.
- Section 8
The NE 1/4, and W 1/2 and the SE 1/4 of the SE 1/4, and the E 1/2 and the SW 1/4 of the SW 1/4.
- Section 9
The NE 1/4, and the SE 1/4, and the SW 1/4, and the NW 1/4.
- Section 10
The NW 1/4 of the SW 1/4, and the W 1/2 of the NW 1/4.
- Section 16
The NE 1/4, and NW 1/4.
- Section 17
The N 1/2 of the NE 1/4.

Township 12 South, Range 12 West, SLM

- Section 31
The NW 1/4, the N 1/2 of the SW 1/4, the SW 1/4 of the NE 1/4, and the NE 1/4 of the SW 1/4.
- Section 32
The W 1/2 of the SE 1/4, and the E 1/2 of the SW 1/4, and the SE 1/4 of the NW 1/4.

BANK ONE.

RECEIVED

OCT 22 2004

DIV OF OIL GAS & MINING

IRREVOCABLE STANDBY CREDIT

MAIL

DATE: OCTOBER 21, 2004

m/023/003
Bank One, NA
Global Trade Services
One Bank One Plaza
Mail Code IL1-0236
Chicago, IL 60670
Tel: (800) 634-1969 Fax: (312) 954-0203
SWIFT: FNBCUS44
Telex: ITT4330253 FNBCUI

BENEFICIARY:
UTAH DIVISION OF OIL, GAS
AND MINING
1594 WEST NORTH TEMPLE, SUITE 1210
SALT LAKE CITY, UTAH 84114-5801
ATTN: LOWELL P. BRAXTON

BY THE ORDER OF:

APPLICANT:
BRUSH RESOURCES INC.
10 MILES NORTH HIGHWAY 6
DELTA, UTAH 84624
ATTN: ALEX BOULTON

DRAFTS DRAWN MUST BE MARKED:
WITH OUR REF NO: 4 --
OPENER'S REFERENCE NO: CLS410609

AMOUNT
USD367,600.00 (THREE HUNDRED SIXTY
SEVEN THOUSAND AND SIX HUNDRED
AND NO/100 U.S. DOLLARS)

EXPIRY DATE
OCTOBER 22, 2005

PLACE OF EXPIRY
AT BANK ONE, NA, CHICAGO, ILLINOIS

BANK ONE, N.A. OF CHICAGO, ILLINOIS, HEREBY ESTABLISHES THIS IRREVOCABLE LETTER OF CREDIT (THE "LETTER OF CREDIT") IN FAVOR OF THE UTAH DIVISION OF OIL, GAS AND MINING ("DIVISION") FOR AN AGGREGATE AMOUNT NOT TO EXCEED USD367,600.00 (THREE HUNDRED SIXTY SEVEN THOUSAND SIX HUNDRED AND NO/100 U.S. DOLLARS (FACE AMOUNT)) EFFECTIVE IMMEDIATELY.

THIS LETTER OF CREDIT WILL EXPIRE UPON THE FIRST EVENT SET FORTH AS FOLLOWS (A) 5:00 O'CLOCK P.M. CHICAGO, ILLINOIS TIME ON OCTOBER 22, 2005 OR (B) THE DATE UPON WHICH SUFFICIENT DOCUMENTS ARE EXECUTED BY THE DIVISION TO RELEASE BRUSH RESOURCES INC. ("OPERATOR") FROM FURTHER LIABILITY FOR RECLAMATION OF THE TOPAZ MINING PROPERTIES M/023/003 WITH NOTICE TO BANK OR SURETY BY THE DIVISION ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT WITH DIRECTIONS FOR CANCELLATION.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF ONE YEAR FROM THE CURRENT OR ANY FUTURE EXPIRATION DATE UNLESS WE GIVE NOTICE TO THE DIVISION AT LEAST 90 DAYS PRIOR TO THE EXPIRATION DATE THAT WE ELECT NOT TO EXTEND THE LETTER OF CREDIT.

FUNDS UNDER THE LETTER OF CREDIT ARE AVAILABLE AGAINST THE DIVISION'S SIGHT DRAFT, IN THE FORM OF EXHIBIT A, SPECIFYING LETTER OF CREDIT NO. 1, DELIVERED TO THE OFFICE OF BANK ONE, NA, 300 SOUTH RIVERSIDE PLAZA, 7TH FLOOR, CHICAGO, ILLINOIS 60606, MAIL CODE IL1-0236, ATTN: STANDBY LETTER OF CREDIT UNIT. AT THE DIVISION'S SOLE ELECTION, THE DIVISION MAY PRESENT SIGHT DRAFTS FOR LESS THAN THE FACE AMOUNT. EACH DRAFT MUST BE ACCOMPANIED BY A CERTIFICATE IN THE FORM OF EXHIBIT B, SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE DIVISION.

UPON RECEIPT OF THE DIVISION'S SIGHT DRAFT(S) AND CERTIFICATE(S) AS PROVIDED IN PARAGRAPH NO. 4 ABOVE IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT AND PRESENTED ON OR BEFORE THE EXPIRATION OR TERMINATION OF THIS LETTER OF CREDIT, WE WILL EFFECT PAYMENT IN THE AMOUNT AS THE DIVISION MAY SPECIFY, WITHIN THE LIMITS OF THE SECOND SENTENCE OF PARAGRAPH NO. 4 OF THIS LETTER OF CREDIT, AVAILABLE TO THE DIVISION NO LATER THAN CLOSE OF BUSINESS, ON THE SECOND BUSINESS DAY FOLLOWING BANK ONE, N.A.'S RECEIPT OF THE SIGHT DRAFT AND CERTIFICATE AND IN SUCH A MANNER AS THE DIVISION MAY SPECIFY.

(CONTINUED)

BANK ONE.

Bank One, NA
Global Trade Services
One Bank One Plaza
Mail Code IL1-0236
Chicago, IL 60670
Tel: (800) 634-1969 Fax: (312) 954-0203
SWIFT: FNBCUS44
Telex: ITT4330253 FNBCUJ

LETTER OF CREDIT NO.

OCTOBER 21, 2004

WE WILL GIVE PROMPT NOTICE TO THE OPERATOR AND TO THE DIVISION DIRECTOR OF ANY NOTICE RECEIVED OR ACTION FILED ALLEGING THE INSOLVENCY OR BANKRUPTCY OF BANK ONE, NA. OR ALLEGING ANY VIOLATIONS OF REGULATORY REQUIREMENTS WHICH COULD RESULT IN SUSPENSION OR REVOCATION OF THE BANK ONE, NA'S CHARTER OR LICENSE TO DO BUSINESS.

THE LETTER OF CREDIT WILL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH AND SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDIT, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500, AS THE SAME MAY BE AMENDED AND IN EFFECT FROM TIME TO TIME ("UCP") IN THE EVENT OF A CONFLICT BETWEEN STATE OF UTAH AND THE UCP, STATE OF UTAH LAW SHALL GOVERN.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR LETTER OF CREDIT UNIT, TRADE SERVICE GROUP, MENTIONING OUR REFERENCE NUMBER AS IT APPEARS ABOVE.

VERY TRULY YOURS
BANK ONE, NA


PREPARER/AUTHORIZED SIGNER
AUTHORIZED SIGNER

PAGE 2 OF 2

BANK ONE.

Bank One, NA
Global Trade Services
One Bank One Plaza
Mail Code IL1-0236
Chicago, IL 60670
Tel: (800) 634-1969 Fax: (312) 954-0203
SWIFT: FNBCUS44
Telex: ITT4330253 FNBCUI

EXHIBIT A

SIGHT DRAFT

AMOUNT: \$ _____

DATE: _____

AT SIGHT OF THIS BILL OF EXCHANGE PAY TO THE ORDER OF _____ **THE**

AMOUNT OF _____ **U.S. DOLLARS**

VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF BRUSH RESOURCES INC.

DRAWN UNDER BANK ONE, NA LETTER OF CREDIT NO. _____

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

TO
BANK ONE, NA
300 SOUTH RIVERSIDE PLAZA
7TH FLOOR, MAIL CODE IL1-0236
CHICAGO, IL 60606-0236

BANK ONE.

Bank One, NA
Global Trade Services
One Bank One Plaza
Mail Code IL1-0236
Chicago, IL 60670
Tel: (800) 634-1969 Fax: (312) 954-0203
SWIFT: FNBCUS44
Telex: ITT4330253 FNBCUI

EXHIBIT B
TO
LETTER OF CREDIT NO.:

I, _____ A DULY AUTHORIZED REPRESENTATIVE OF THE UTAH DIVISION OF OIL, GAS AND MINING, HEREBY CERTIFY THAT (1) THE DRAWING IN THE AMOUNT OF US\$ _____, BY SIGHT DRAFT ACCOMPANYING THIS CERTIFICATE, UNDER LETTER OF CREDIT NO. _____, (2) THE LETTER OF CREDIT HAS NEITHER EXPIRED NOR TERMINATED PURSUANT TO ITS TERMS, (3) THE AMOUNT OF THE SIGHT DRAFT, TOGETHER WITH ANY AMOUNTS PREVIOUSLY DRAWN UNDER THE LETTER OF CREDIT, DOES NOT EXCEED THE FACE AMOUNT, AND (4) THE UTAH BOARD OF OIL, GAS AND MINING, AFTER NOTICE AND HEARING, HAS ENTERED AN ORDER WHICH HAS NOT BEEN STAYED, ORDERING FORFEITURE OF LETTER OF CREDIT NO. _____ IN ACCORDANCE WITH APPLICABLE LAW. PROCEEDS OF THIS DRAWING WILL BE UTILIZED IN FULL TO PAY THE EXPENSES RELATING TO THE RECLAMATION LIABILITY, TOGETHER WITH THE COSTS OF COLLECTION, INCLUDING ATTORNEYS FEES, FOR THE TOPAZ MINING PROPERTIES, M/023/003.

THE UTAH DIVISION OF OIL, GAS AND MINING

BY _____
AUTHORIZED SIGNATURE

DATE _____